

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARLES DANIEL JR.,

Plaintiff,

v.

TODD FREDRICKSEN,

Defendant.

CASE NO. C11-1667 MJP

ORDER GRANTING MOTION TO
FILE OVERLENGTH BRIEF AND
ADOPTING REPORT AND
RECOMMENDATION

THIS MATTER comes before the Court on Defendant's motion to dismiss (Dkt. No. 44), Plaintiff's response (Dkt. No. 48), the Report and Recommendation of the Honorable James P. Donohue, United States Magistrate Judge (Dkt. No. 49), Plaintiff's motion to file over length objections (Dkt. No. 71), and Plaintiff's objections to the Report and Recommendation (Dkt. NO. 71-1). The Court GRANTS Plaintiff's motion to file over length objections, and has considered the objections in full. The Court, having reviewed all relevant documents, ADOPTS the Report and Recommendations.

Plaintiff argues in his objections his time barred claims should be subject to equitable tolling because his case presents extraordinary circumstances. (Dkt. No. 71-1 at 9.) He raises

1 concerns the timing of Defendants in responding to his administrative complaints was in bad
2 faith and a deliberate attempt to run the statute of limitations on his claims. (Id.) Plaintiff offers
3 no factual support for the bad faith claim. Plaintiff's arguments do not undercut Judge
4 Donohue's argument that Plaintiff could have filed his constitutional claims at the conclusion of
5 his administrative process in October 2007. (Dkt. No. 69 at 11.) Plaintiff's arguments do not
6 support a finding of extraordinary circumstances requiring equitable tolling.

7 Plaintiff also argues his conspiracy claim should remain active due to circumstantial
8 evidence. (Dkt. No. 71-1 at 11.) He argues it is improbable that various Department of
9 Corrections employees would mishandle property with respect to the same inmate at different
10 facilities over a period of 6 years. (Id. at 11-12.) The Report and Recommendation adequately
11 addresses this issue. (Dkt. No. 69 at 10.) The allegedly conspiratorial events took place over
12 three years apart and involve staff at three separate facilities. (Id.) The fact that all facilities were
13 Washington Department of Corrections Facilities is not enough to infer a conspiracy, and
14 Plaintiff alleges no specific facts to support a meeting of the minds. (Id.)

15 Finally, Plaintiff continues to argue he was not supplied with a rejection notice for his
16 mail and this was a violation of policy and delayed his ability to take certain legal actions. (Dkt.
17 No. 71 at 7.) The Report and Recommendation addresses this when it notes no rejection notice
18 was given because Plaintiff's mail was never actually rejected, rather, it was mishandled at most.
19 (Dkt. No. 69 at 14.)

20 The Court agrees with and ADOPTS the conclusions of the Report and Recommendation.
21 The Court hereby ORDERS:

- 22 (1) The Court GRANTS Plaintiff's motion to file over length objections to the Report
23 and Recommendation (Dkt. No. 71) and has considered the objections in full.

1 (2) The Court adopts the Report and Recommendation.

2 (3) The Washington State Department of Corrections defendants' motion to dismiss (Dkt.
3 No. 44) is GRANTED.

4 (4) Plaintiff's complaint (Dkt. No. 13) and this action are DISMISSED with prejudice.

5 (5) The Clerk is ordered to provide copies of this Order to Plaintiff, to counsel for
6 defendants, and to Judge Donohue.

7 Dated this 19th day of March, 2013.

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11 Marsha J. Pechman
12 Chief United States District Judge
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